

APPEAL NO. 033138
FILED JANUARY 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 10, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. The claimant appealed, contending that he “did look for work every week but . . . probably forgot to document the information,” and that although his treating doctor said that he “can’t work” he looked for work and actually worked during the sixth quarter qualifying period. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The direct result requirement has not been appealed. The parties stipulated that the qualifying periods were from February 8 through August 8, 2003.

As the hearing officer notes, the claimant proceeded on “somewhat bifurcated” theories of a total inability to work (Rule 130.102(d)(4)) during the fifth quarter qualifying period, and documented job search (Rule 130.102(e)) and return to work at a position relatively equal to his ability to work (Rule 130.102(d)(1)) with a little contact with the Texas Rehabilitation Commission (TRC) (Rule 130.102(d)(2)) thrown in, during the sixth quarter.

Regarding the fifth quarter qualifying period, Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee’s ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer, in the Statement of the Evidence, summarizes the medical evidence in some detail and concludes that none of the doctors have provided a narrative report which specifically explains how the injury causes a total inability to work and that another doctor, Dr. W records show that the claimant could work in a sedentary or light capacity. The hearing officer’s determination on the fifth quarter SIBs is supported by the evidence.

Regarding the sixth quarter, Rule 130.102(e) sets out the requirement that a claimant look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. The claimant

documents, at most, five job search efforts which clearly do not meet the requirement of Rule 130.102(e). Forgetting to document the required job searches does not establish good cause for failing to do so.

The claimant also contends that he returned to work in a position relatively equal to his ability to work by becoming the property manager of a house and property where he lived and which was owned by his son. The claimant testified that he oversaw the management of the house, arranged for repair and maintenance, and fed the pets, for which he lived in the house rent free (he had been paying \$300 a month rent) and received \$200 a month. The hearing officer commented that this “job” was “merely an arrangement concocted by [claimant] and his son in an effort to assist claimant with living expenses and help him satisfy the requirements for the SIBs rules.” The hearing officer found that the claimant had not returned to work in a position relatively equal to his ability to work.

Finally, the claimant made some effort to contact the TRC during the latter part of the sixth quarter qualifying period. In evidence is a letter dated August 6, 2003, indicating that the claimant is eligible for services from TRC. The evidence is fairly clear, however, that due to taking a pain management program and for other reasons, the claimant would not begin a full-time vocational rehabilitation program (see Rule 130.102(d)(2)) until January 2004.

The hearing officer’s determinations that the claimant failed to prove that he had made a good faith effort to obtain employment for the fifth and sixth quarters are supported by the evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge